

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2987 of 1991

With

CIVIL APPLICATION No. 3191 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MEMAN HAROONBHAI HAJIBHAI

Versus

COLLECTOR, B.K.

Appearance in both the matters:

MR MAGANBHAI M DESAI for Petitioners
MS BR GAJJAR AGP for Respondent No. 1, 2
MS PJ VYAS for Respondent no.3.

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 01/05/2000

COMMON ORAL JUDGEMENT

None appears for the petitioners. I have heard Mr. P.J.Vyas, learned counsel appearing on behalf of Lakhani Gram Panchayat -respondent no.3. I have also heard Ms. B.R.Gajjar, learned Assistant Government

Pleader appearing on behalf of respondent nos. 1 and 2. Special Civil Application No. 2987 of 1991 and Civil Application No. 3191 of 1995 are disposed of by this common judgment.

The petitioners applied for regularisation of their possessions of the disputed land by an application dt. 26th April, 1985. The Collector, after hearing the petitioners, rejected the prayers by his order dt. 2nd May, 1987. Having felt aggrieved by an order passed by the Collector, the petitioners filed Revision Application No. 38 of 1987 before the State Government. The Government in revision application set aside the order of the Collector by order dt. 21st June, 1988 and remanded the case to the Collector with a direction to decide the application of the petitioners in accordance with the Government rules and standing orders. When the case came back to the Collector, the petitioners filed an application before the Collector stating that when the encroachment of land of other persons had been regularised by the Government, there is no reason to deny the same benefits to the petitioners. However the Collector, after hearing the parties, rejected the prayers made by the petitioners for regularisation of their possession in disputed land and also to allot the land to the petitioners. During pendency of petition before the Collector, Mamlatdar issued show cause notice on 21st November, 1988 under Section 61 of the Land Revenue Code for summary eviction of petitioners from the land in question. That matter is pending with the Mamlatdar. In the mean time, the petitioners having felt aggrieved by order dt. 10th October, 1988 passed by the Collector, filed revision application before the State Government and the State Government by its order dt. 1st February, 1991 rejected the petition of the petitioners. The ground of rejection of the prayer of the petitioners by the Collector and upholding the same by the State Government is that the land in question is within the public road, and therefore, the land in question cannot be given to the petitioners. More over the land is situated very near and in front of the Panchayat Office. There are two road and allotment of land to the petitioners will interfere the vehicular traffic in public road. Having felt aggrieved by the order of the State Government in Revision Application No.42 of 1989 on 1st February, 1991, the petitioners have filed this Special Civil Application No. 2987 of 1991.

I have gone through the order passed by the State Government in Revision Case No. 42 of 1989 (Annexure: M). It appears that the Collector as well as the State

Government have rejected to regularise the possession of the petitioners in view of the fact that land is within the public road, and if the land is given to the petitioners, then it will interfere in the vehicular traffic. After going through the order passed by the State Government, I am of the view that the Government has given sufficient reasons for not granting land to the petitioner for commercial purpose. No land near public roads can be allotted to any private individual as it will have the effect of interfering with the enjoyment of road by public at large. Consequently, I am of the view that no error of law has been committed by the State Government in rejecting the prayer of the petitioners for allotment of land in question.

During the pendency of Special Civil Application No. 2987 of 1991, Lakhani Gram Panchayat -respondent no.3 of Civil Application No.3191 of 1995 issued show cause notice to the petitioners on 29th December, 1995 for summary eviction of the petitioners. Having felt aggrieved by the notice issued by the Panchayat, the petitioners filed aforesaid Civil Application for staying implementation of the notice.

Mr. P.J.Vyas, learned counsel appearing on behalf of Lakhani Gram Panchayat -respondent no.3 in Civil Application No. 3191 of 1995 submitted that present disputed land is a part of public road and the roads are vested in the Panchayat as per provisions of Section 96 of the Gujarat Panchayats Act. Therefore, the respondent no.3 -Panchayat is entitled to evict any unauthorised occupant from the public road which has been vested in it. Accordingly, learned counsel submitted that no illegality has been committed by the respondent Panchayat by issuing notice to the petitioners for their summary eviction. There is sufficient force in the submission of learned counsel appearing on behalf of respondent no. 3 -Panchayat. It is evident that the petitioners are occupying part of public road and they applied for regularisation of their possession by way of allotment which has been cancelled by the State Government. Therefore, the petitioners have no right to occupy the public road and get regularisation of their possession. Since the land in question is vested with the Panchayat, the Panchayat is entitled to evict any unauthorised occupants from the public road as per provisions of the Gujarat Panchayats Act. Consequently, I am of the view that no illegality has been committed by the Panchayat for issuing notice to the petitioners for their summary eviction.

I do not find any merits either in Special Civil

Application No. 2987 of 1991 or in Civil Application No. 3191 of 1995. Accordingly both -Special Civil Application and Civil Application are hereby dismissed. But I make no order as to costs. Rule is discharged in both the matters. Interim relief, if any, granted stands vacated.

Date: 1/5/2000. (P.K.SARKAR, J.)

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